

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

OP.No. 9951 of 1996(S)

AGAINST THE ORDER IN RA.226(COCH)/1994 IN ITA 211//COCH/92
of I.INCOME TAX APPELLATE .TRIBUNAL,COCHIN BENCH
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PETITIONER:

THE COMMISSIONER OF INCOME TAX, COCHIN.

BY STANDING COUNSEL, GOVERNMENT OF INDIA (TAXES)
SRI.P.K.RAVINDRANATHA MENON(SR.)
SRI.GEORGE K. GEORGE.

RESPONDENT:

M/S. BEE VEE LIQUORS, NAYARAMBALAM,
ERNAKULAM.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

O.P.No.9951 of 1996

Dated, this the 26th day of July, 2007

JUDGMENT

H.L. DATTU, C.J.

This is a petition filed by the Revenue under section 256(2) of the Income Tax Act, 1961, hereinafter for the sake of brevity referred to as the Act.

2. The assessee was before the Income Tax Appellate Tribunal, Cochin Bench in I.T.A. No.211/1992 for the assessment year 1981-82. The Tribunal has allowed the assessee's appeal and thereby has set aside the orders passed by the Commissioner of Income-tax (Appeals), Cochin, dated 31.12.1991.

3. The Revenue had filed an application under section 256(1) of the Income Tax Act inter alia requesting the Tribunal to state the case and refer the questions of law for consideration and decision of this court. The Tribunal has rejected the said application/petition. That is how the Revenue is before us in this petition filed under section 256(2) of the Act.

4. The Revenue has raised the following questions of law. They are as under:

“1. Whether, on the facts and in the circumstances of the case and also in the light of the assessee's letter dated 29.9.1990 and the income and expenditure account, was the assessee following mercantile system of accounting?

2. Whether, on the facts and in the circumstances of the case and also in the light of the papers and documents referred to in question No.1, is not the understanding of the

direction in the order of the Tribunal by the Revenue and the consequential implementation correct and valid?

3. Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim the kist amount on accrued basis?

4. Whether, on the facts and in the circumstances of the case and in view of the observation of the Tribunal in paragraph 6 of its order: "In law, if the mercantile system of accounting has been followed by the assessee" and hence the Tribunal not finding the system of accounting by the assessee as regards the expenditure as mercantile, the Tribunal is right in law and fact in holding that the kist amount of Rs.8,63,406/- has accrued due and the same whether paid or not should be considered as eligible for deduction?

5. Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim deduction of the sum of Rs.8,63,406/- in the computation of income?

6. Whether, on the facts and in the circumstances of the case, the interpretation put on the earlier order of the Tribunal is sustainable in law and fact?

5. After going through the orders passed by the Tribunal and after perusing the questions of law framed by the Revenue, we are of the opinion that the questions of law raised by the Revenue requires consideration and decision

by this court. Therefore we pass the following:

Order

i) The petition is allowed.

ii) A direction is issued to the Income Tax Appellate Tribunal, Cochin Bench to state the case and refer the questions of law arising out of the order passed in ITA No.211/1992 for the assessment year 1981-82 as expeditiously as possible.

Ordered accordingly.

**H.L. DATTU,
CHIEF JUSTICE.**

**K.T. SANKARAN,
JUDGE.**

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K.T.SANKARAN, J.

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